

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

CAPRI COSMETOLOGY COLLEGE, :
RESPONDENT. :

FINAL DECISION AND ORDER
93 RBC 007, 93 RBC 008

LS9801091RBC

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Capri Cosmetology College
6414 Odana Road
Madison, WI 53719

Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Department Secretary.. The Secretary has reviewed this Stipulation and considers it acceptable.

Accordingly, the Department Secretary adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Capri Cosmetology College is duly licensed in the state of Wisconsin as a barbering and cosmetology school (license #41). This license was first granted on September 15, 1983.
2. Capri Cosmetology College's latest address on file with the Department of Regulation and Licensing is 6414 Odana Road, Madison, WI 53719.
3. Beginning on or about January 24, 1993, Capri Cosmetology College, hereinafter the Respondent, presented a course of study to interested students in the subject of aesthetics. A total of four students attended the course.

4. On or about January 1, 1993, Respondent hired Mary Jo Harper, a licensed aesthetician in the State of Wisconsin, to teach the theory portion of the aesthetics course. Mary Jo Harper did not have an instructor's certification to provide practical instruction in aesthetics at the time of her hiring or at any time during her employment by Respondent.

5. From on or about January 24, 1993, until the date she terminated her employment at Capri Cosmetology College (March 21, 1993), Mary Jo Harper, in addition to providing aesthetics theory training, also provided practical aesthetics training to her students. On various occasions throughout this time frame, under Mary Jo Harper's direct supervision, the students performed practical applications of the theory instructions on each other, on models, or on non-paying Capri customers. At the times of the practical instruction, a duly Wisconsin licensed barber and cosmetologist was either physically present or otherwise in the Respondent school building.

CONCLUSIONS OF LAW

1. By the conduct described above, Capri Cosmetology College is subject to disciplinary action against its license to practice as a barber and cosmetology school in the state of Wisconsin, pursuant to Wis. Stats. sec. 440.64.

2. The Department of Regulation and Licensing is authorized to enter into the attached Stipulation pursuant to Wis. Stats. sec. 227.44(5).

3. Respondent Capri Cosmetology College has violated Wis. Stats. sec. 440.63(1)(a) and Wis. Stats. sec. 440.64(3)(b)3 by authorizing Mary Jo Harper to provide practical aesthetics training to students while she did not have the requisite instructor's certification.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Stipulation is accepted.

2. Respondent Capri Cosmetology College be, and hereby is, reprimanded.

3. IT IS FURTHER ORDERED that Respondent Capri Cosmetology College pay partial costs of this matter in the amount of \$500.00 within thirty (30) days of the date of this order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

4. IT IS FURTHER ORDERED that in the event Respondent Capri Cosmetology College fails to pay the \$500.00 partial costs within the time and within the manner as set forth above then, and in that event, and without further notice to the Respondent Capri Cosmetology College, its school license #87-0000041, shall be immediately suspended without further hearing and without further order of the Department and said suspension shall continue until the full

amount of the said partial costs have been paid to the Department of Regulation and Licensing and its failure to pay the costs shall be considered a violation of this Department order.

IT IS FURTHER ORDERED that investigative files 93 RBC 007 and 93 RBC 008 be, and hereby are, closed.

The rights of a party aggrieved by this Decision to petition the Department for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated this 9th day of January, 1998.

DEPARTMENT OF REGULATION AND LICENSING

By:

Marlene Cummings
Marlene Cummings, Secretary

9/98
Date

GMS:kcb

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STATE OF WISCONSIN
BEFORE THE
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

CAPRI COSMETOLOGY COLLEGE,
RESPONDENT.

STIPULATION
93 RBC 007, 93 RBC 008

It is hereby stipulated between Capri Cosmetology College, personally on its own behalf and Gerald M. Scanlan, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Capri Cosmetology College's licensure by the Division of Enforcement. Capri Cosmetology College consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.
2. Capri Cosmetology College understands that by the signing of this Stipulation it voluntarily and knowingly waives its rights, including: the right to a hearing on the allegations against it, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against it; the right to call witnesses on its behalf and to compel their attendance by subpoena; the right to testify itself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to it under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Capri Cosmetology College is aware of it's right to seek legal representation and has obtained legal advice prior to signing this Stipulation.
4. Capri Cosmetology College agrees to the adoption of the attached Final Decision and Order by the Department of Regulation and Licensing. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Department's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Department, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Department, the parties agree not to contend that the Department has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney for the Division of Enforcement and the member of the Department staff assigned as an advisor in this investigation may appear before the Department Secretary or her designee for the purposes of speaking in support of this agreement and answering questions that the deciding official may have in connection with deliberations on the Stipulation.

7. The Division of Enforcement joins Capri Cosmetology College in recommending the Department of Regulation and Licensing adopt this Stipulation and issue the attached Final Decision and Order.

Capri Cosmetology College by:

By:

Charles Fugate

1-2-98
Date

[Signature]
John L. Cates, Attorney for Respondent

12-22-97
Date

Gerald M. Scanlan
Gerald M. Scanlan, Attorney
Division of Enforcement

1-8-98
Date

GMS:kcb
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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

In the Matter of the Disciplinary Proceedings Against

Capri Cosmetology College,

AFFIDAVIT OF MAILING

Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On January 12, 1998, I served the Final Decision and Order dated January 9, 1998, LS9801091RBC, upon the Respondent Capri Cosmetology College's attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 157 700.

John L. Cates, Attorney
131 W. Wilson Street, Suite 610
Madison WI 53703

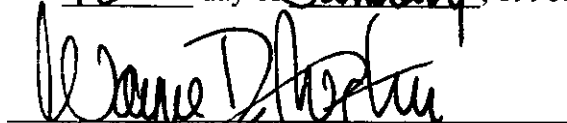


Kate Rotenberg

Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 12th day of January, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: JOHN L. GATES ATTY

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 1/12/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN DEPARTMENT OF REGULATION AND LICENSING

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935